RNC CORPORATION BHD

v.

KESVARAN TP MURUGASU

COURT OF APPEAL, PUTRAJAYA
LOW HOP BING JCA
RAUS SHARIF JCA
ABU SAMAH NORDIN JCA
[CIVIL APPEAL NO: W-03-39-2008]
13 MARCH 2009

CIVIL PROCEDURE: *Execution - Garnishee order - Creditor garnishing money in bank account - Appeal against - Whether creditor a preferential creditor under Danaharta Scheme or Companies Act 1965 - Unsecured creditor - Principles applicable - Validity and legality of company's liquidation - Pleadings - Whether doctrine of estoppel applicable*

COMPANY LAW: *Winding up - Creditor garnishing money in bank account - Appeal against garnishee order - Whether creditor a preferential creditor under Danaharta Scheme or Companies Act 1965 - Unsecured creditor - Principles applicable - Validity and legality of company's liquidation - Pleadings - Whether doctrine of estoppel applicable*

The judgment creditor ('Kesvaran') had obtained an award in the sum of RM342,333 from the Industrial Court against RNC, the appellant company, for constructive dismissal without just cause and excuse. RNC had been placed under special administration by Pengurusan Danaharta Nasional Berhad pursuant to a scheme ('Danaharta Scheme') set out under the Pengurusan Danaharta Nasional Act Berhad 1998 and the Pengurusan Danaharta Nasional Berhad (Amendment) Act 2000. The secured and unsecured creditors of RNC approved the Danaharta Scheme. About eight months after the award was granted, RNC was wound up pursuant to a creditors' voluntary winding up. Kesvaran then initiated proceedings for non-compliance of the award by RNC, and the Industrial Court handed down an enforcement award requiring RNC to pay Kesvaran within 30 days. RNC failed to comply, resulting in Kesvaran filing a Garnishment Application in the High Court to garnish RM342,333 in RNC's account in Bumiputra Commerce Bank Bhd. The Registrar of the High Court granted, *inter alia*, leave pursuant to s. 263(2) of the Companies

Act 1965 ('Act') for Kesvaran to commence legal action against RNC, and subsequently ordered the Garnishee Order to be made absolute. RNC, being aggrieved, filed two notices of appeal to the judge in chambers. The High Court judge dismissed both appeals, holding that: (i) the liquidation that RNC was placed in was void as there was non-compliance with ss. 254 and 260 of the Act; and (ii) the status and priority of Kesvaran's claim had been fully ventilated at the proceedings before the Industrial Court for non-compliance of the award, and the issue of *estoppel*, therefore, applied. Hence, the present appeal by RNC.

Held (allowing the appeal)
Per Raus Sharif JCA delivering the judgment of the court:

(1) Based on the facts and the clear provisions of the law, the leave order should not have been granted for the following reasons: (a) the relief sought by Kesvaran, which was to obtain an unsecured monetary amount, should be dealt with by way of proof of debts as part of the liquidation of RNC; (b) the fact that Kesvaran had an award granted by the Industrial Court should not entitle him to the first cut of RNC's assets over and above the other creditors; (c) Kesvaran's unsecured monetary claim should rank *pari passu ie*, equally with the other unsecured creditors; (d) all creditors, including Kesvaran and the shareholders, were bound by the Danaharta Scheme and, hence, Kesvaran should be paid in accordance to the terms of the Danaharta Scheme; and (e) it would give Kesvaran an advantage over the other creditors in the winding up of RNC, thereby causing prejudice to the other creditors. For the same reasons, the garnishee absolute order should not have been granted. (para 18)

(2) The validity and legality of RNC's liquidation was never raised by Kesvaran. No such challenge was pleaded nor evidence of the same adduced; Kesvaran had only raised it at the submission stage. Thus, the challenge made by him was more of an afterthought and should obviously not be considered since RNC was not afforded the opportunity to proffer evidence to rebut the same. (para 23)

(3) The doctrine of *estoppel* only applies when the same question has been decided in earlier proceedings. In this instance, the Industrial Court had only decided that the Special Administrators had the cash of RM342,333 to pay Kesvaran

but was not willing to do so. Evidently, the issues that were considered in the non-compliance hearing before the Industrial Court were different from the issues in the present case and, therefore, Kesvaran's reliance on the issue of *estoppel* was unfounded as the status and priority of his claims were not decided in the non-compliance proceedings. (para 25)

Bahasa Malaysia *Translation Of Headnotes*

Pemiutang penghakiman ('Kesvaran') telah memperolehi satu award berjumlah RM342,333 dari Mahkamah Perusahaan terhadap RNC, syarikat yang membuat rayuan, untuk pembuangan konstruktif tanpa sebab dan alasan yang adil. RNC telah diletak di bawah pentadbiran khas oleh Pengurusan Danaharta Nasional Berhad mengikut suatu skim ('Skim Danaharta') di bawah Akta Pengurusan Danaharta Nasional Berhad 1998 dan Akta Pengurusan Danaharta Nasional Berhad (Pindaan) 2000. Pemiutang-pemiutang bercagar dan tidak bercagar RNC telah meluluskan Skim Danaharta. Selepas lebih kurang lapan bulan selepas pemberian award itu, RNC telah digulungkan mengikut satu penggulungan sengaja pemiutang-pemiutang. Kesvaran kemudiannya memulakan prosiding bagi ketidakpatuhan award itu oleh RNC, dan Mahkamah Perusahaan mencatatkan suatu award penguatkuasaan yang membuatkan RNC perlu membayar Kesvaran dalam masa 30 hari. RNC gagal mematuhi, mengakibatkan Kesvaran memfail satu Permohonan Garnisan dalam Mahkamah Tinggi untuk mengarniskan RM342,333 dalam akaun RNC di Bumiputra Commerce Bank Bhd. Pendaftar Mahkamah Tinggi memberikan, antara lain, kebenaran mengikut s. 263(2) Akta Syarikat 1965 ('Akta') bagi Kesvaran untuk memulakan tindakan undang-undang terhadap RNC, dan kemudiannya mengarahkan Perintah Garnisan itu dijadikan mutlak. RNC, berasa terkilan, memfail dua notis rayuan kepada hakim dalam kamar. Hakim Mahkamah Tinggi menolak kedua-dua rayuan itu, memutuskan bahawa: (i) penyelesaian yang RNC terletak dalam adalah tak sah disebabkan terdapat ketidakpatuhan dengan ss. 254 dan 260 Akta; dan (ii) status dan prioriti tuntutan Kesvaran telah pun dibicara dengan penuh pada prosiding di hadapan Mahkamah Perusahaan bagi ketidakpatuhan award itu, dan isu *estoppel*, oleh itu, terpakai. Oleh yang demikian, rayuan semasa dibuat oleh RNC.

Diputuskan (membenarkan rayuan)
Oleh Raus Sharif HMR menyampaikan penghakiman mahkamah:

(1) Berdasarkan fakta-fakta dan peruntukan undang-undang yang jelas, perintah kebenaran itu tidak seharusnya diberi atas sebab-sebab yang berikut: (a) relif yang dituntut oleh Kesvaran, iaitu untuk memperolehi satu amaun kewangan tak bercagar, sepatutnya diselesaikan melalui bukti hutang-hutang sebagai sebahagian penyelesaian RNC; (b) fakta bahawa Kesvaran mempunyai satu award yang diberi oleh Mahkamah Perusahaan tidak sepatutnya memberinya hak terhadap aset-aset RNC yang mendahului pemiutang-pemiutang lain; (c) tuntutan kewangan tidak bercagar Kesvaran seharusnya bertaraf *pari passu*, iaitu, sama dengan pemiutang-pemiutang lain; (d) semua pemiutang-pemiutang, termasuk Kesvaran dan pemegang-pemegang syer, adalah terikat oleh Skim Danaharta dan, oleh itu, Kesvaran seharusnya dibayar mengikut terma-terma Skim Danaharta; dan (e) ia akan memberi Kesvaran sesuatu kelebihan atas pemiutang-pemiutang lain dalam penggulungan RNC, dengan itu menyebabkan prejudis terhadap pemiutang-pemiutang lain. Bagi sebab-sebab yang sama, perintah garnisan mutlak itu tidak sepatutnya dibenarkan.

(2) Keesahan penyelesaian RNC tidak pernah dibangkit oleh Kesvaran. Tiada apa-apa cabaran yang telah diplid ataupun keterangan tentang yang sama dikemukakan; Kesvaran hanya membangkitkannya pada peringkat hujahan. Oleh itu, cabaran yang dibuat olehnya merupakan sesuatu yang difikirkan kemudian dan seharusnya tidak ditimbangkan sebab RNC tidak diberi peluang untuk mengemukakan keterangan untuk mematahkan yang sama.

(3) Doktrin *estoppel* hanya terpakai apabila soalan yang sama telah diputuskan dalam prosiding yang lebih awal. Dalam kes semasa, Mahkamah Perusahaan telah hanya memutuskan bahawa Pentadbir Khas mempunyai duit sebanyak RM342,333 untuk membayar Kesvaran tetapi enggan berbuat sedemikian. Jelasnya, isu-isu yang dipertimbangkan dalam perbicaraan ketidakpatuhan di hadapan Mahkamah Perusahaan adalah berbeza daripada isu-isu dalam kes semasa dan, oleh itu, harapan Kesvaran atas isu *estoppel* tidak berasas kerana status dan prioriti tuntutannya tidak diputuskan dalam prosiding ketidakpatuhan itu.

Case(s) referred to:
Koh Siah Poo v. Sayang Plantation Bhd [2002] 1 CLJ 501 CA ***(refd)***
Malayan United Finance Bhd v. Noormurni Sdn Bhd [1988] 1 CLJ 149; [1988] 1 CLJ (Rep) 190 SC ***(refd)***
TSC Education Sdn Bhd v. Kolej Yayasan Pelajaran Mara & Anor [2002] 2 CLJ 581 HC ***(refd)***

Legislation referred to:
Companies Act 1965, ss. 154(1), 176, 254, 260, 263(2)
Industrial Relations Act 1967, s. 56
Rules of the High Court 1980, O. 49
Pengurusan Danaharta Nasional Berhad Act 1998, ss. 41(1)(e), 46(4), 47(3)

For the appellant - Lim Chee Wee (Ravneet Kaur with him); M/s Skrine
For the respondent - Rishwant Singh; M/s Zul Rafique & Partners

[Appeal from High Court, Kuala Lumpur; Application for Execution No: 37-59-2005]

Reported by Suresh Nathan

JUDGMENT

Raus Sharif JCA:

Facts

[1] The facts of this case are these. The judgment creditor (Kesvaran) was employed by RNC as Senior General Manager starting from 24 September 1996. On 23 January 1998 he was promoted to the post of Chief Executive Officer and Executive Director. He was tasked on to restructure the RNC group of companies to put it in a stronger financial position.

[2] Under his stewardship, RNC on 17 August 1998 obtained a court order under s. 176 of the Companies Act 1965. This entitled RNC to a nine months protection period from its creditors. In March 1999, the restraining order was further extended for a period of nine months.

[3] With the restraining orders, Kesvaran proceeded to embark on a restructuring exercise involving the companies within the group. Despite his effort, RNC and its groups of companies began facing dire financial difficulties. RNC put into effect a wide cost

A cutting programme. On 2 February 1999, the staff were informed that a monthly pay cut will be implemented to all employees earning more than RM3,500. As the result, Kesvaran salary was reduced from RM13,000 to RM8,450. He protested. On 19 February 1999, he considered himself constructively dismissed
B by RNC.

[4] In the meantime, on 27 July 1999, RNC was placed under special administration by Pengurusan Danaharta Nasional Berhad ("Danaharta") pursuant to a scheme ("Danaharta Scheme") set
C out under Pengurusan Danaharta Nasional Act 1998 and the Pengurusan Danaharta Nasional Amendment Act 2000 ("Danaharta Act"). On 20 March 2000, the secured and the unsecured creditors of RNC approved the Danaharta Scheme.

D **[5]** While this was going on, Kesvaran's complaint of constructive dismissal was referred to the Industrial Court. The Industrial Court, on 1 September 2004 held that Kesvaran had been constructively dismissed without just cause or excuse. Kesvaran was awarded the sum of RM342,333 ("award") comprising of the
E following amounts:

(a) Backwages RM312,000; and

(b) Compensation *in lieu* of reinstatement RM30,333;

F **[6]** About eight months after the award, RNC was wound up pursuant to creditor's voluntarily winding up. It happened on 20 May 2005. Dato' Abu Hanifah bin Noordin and Vincent Chew Cheong Eu were appointed to act jointly and severally as the liquidators of RNC.

G **[7]** Kesvaran on his part then initiated proceedings under s. 56 of the Industrial Relations Act 1967 for non-compliance of the Industrial Court Award by RNC. On 5 August 2005, the Industrial Court handed down an enforcement award requiring RNC to pay Kesvaran within thirty days. RNC failed to comply.
H This resulted in Kesvaran, on 5 January 2006 filing a Garnishment Application in the High Court to garnish RM342,333 in RNC's Bumiputra Commerce Bank Berhad's ("BCB") account.

[8] On 16 February 2006, the registrar of the High Court on
I an *ex parte* basis, granted:

(a) leave pursuant to s. 263(2) of the Companies Act 1965 for Kesvaran to proceed and/or commence legal action against RNC;

(b) an order pursuant to O. 49 of Rules of the High Court requiring RNC and/or Bumiputra-Commerce Bank Berhad ("BCB") to show cause why Kesvaran should not be allowed to garnish RNC's monies held with BCB.

[9] On 20 March 2006, RNC filed a summons in chambers to set aside the *ex parte* orders. On 19 June 2006, RNC's application was dismissed by the registrar and at the same time ordered the Garnishee Order to be made absolute.

[10] Aggrieved with the said decisions, RNC filed two notices of appeal to the judge in chambers. On 24 January 2008, the learned High Court Judge dismissed both appeals. Hence this appeal.

Decision Of The High Court

[11] The High Court in dismissing RNC's appeals basically held:

(i) The creditors voluntary liquidation that RNC was placed in was void because there was non-compliance with ss. 254 and 260 of the Companies Act 1965 as there was no meeting of the creditors of RNC whether secured or unsecured.

(ii) At the proceedings before the Industrial Court for the non-compliance of the Award dated 1 September 2004, the status and priority of Kesvaran's claim had been fully ventilated. The issue of *estoppel* therefore applies and RNC could not re-ventilate its claims in the High Court particularly since RNC has not chosen to review that proceedings for non-compliance in the Industrial Court resulting in the award of 5 August 2005.

Findings

(i) The Validity Of The Creditor's Voluntary Winding-up

[12] The entire basis of RNC's appeal is that Kesvaran is an unsecured creditor and is therefore not entitled to garnish the sum of RM342,333 as Kesvaran is not a preferential creditor under the Danaharta Scheme or the Companies Act 1965. Thus, Kesvaran would not be entitled to any preferential treatment above other unsecured creditors of RNC.

[13] Kesvaran on the other hand contended that the actions of the Special Administrators pursuant to s. 47(3) of the Danaharta Act did not amount to liquidation of RNC as envisaged by the Companies Act 1965. According to Kesvaran, the relevant provisions of the Companies Act 1965 had not been complied with and as such the liquidation of RNC was invalid, void and of no effect.

[14] The learned High Court Judge agreed with Kesvaran. With respect, I hold otherwise. In the present case, one has to appreciate the implications of the special administration under the Danaharta Act and the significance of the Danaharta Scheme. Under s. 41(1) of the Danaharta Act, there is a statutory moratorium of all legal proceedings against a company which is placed under special administration by Danaharta. The section reads as follows:

> **41. Effect of appointment of Special Administrator**
>
> (1) Subject to subsection (6), on the appointment of the Special Administrator, a moratorium shall take effect during which:
>
> …
>
> (e) no proceedings and no execution or other legal process may be commenced or continued with, and no distress may be levied, against the affected person or its assets except with the prior written consent of the Corporation;
>
> …
>
> (6) Nothing in this section shall prevent any civil or criminal proceedings from being instituted or continued by any regulatory body under any written law against the affected person.

[15] Section 41(1)(e) of the Danaharta Act, clearly stipulates that there would be a moratorium against all execution proceedings against a company or its assets whilst the company remains in special administration. In the present case, there is no dispute that RNC had been placed under special administration by Danaharta. Hence, a statutory moratorium of all legal proceedings came into effect when RNC was put under special administration.

[16] Further, we have s. 46(4) of the Danaharta Act which reads as follows:

46. Secured Creditors' Meeting

(1) The Special Administrator shall, after the approval of the proposal by the Corporation, send by prepaid registered post or in such manner prescribed under this Act to the last known address of the affected person and each of the secured creditors of the affected person known to the Special Administrator.

...

(4) If:

(a) a majority in value of the secured creditors, present and voting, either in person or by proxy, at the meeting approves the proposal; or

(b) there are no secured creditors of the affected person known to the Special Administrator and the Corporation approves the proposal under subsection 45(2),

the proposal, including the proposal as it may subsequently be modified under section 48, *shall be binding on the affected person, all members and creditors of the affected person and any other person affected by the proposal, whether or not the person had knowledge or notice of the proposal.*

[17] Section 46(4) of Danaharta Act clearly provides that upon approval of the Danaharta Scheme by the secured creditors of RNC, the Danaharta Scheme becomes binding on amongst others RNC's creditors. In the present case, the secured creditors had approved the Danaharta Scheme. In relation to the distribution to RNC's creditors, the Danaharta Scheme provided amongst others that:

(a) RNC's creditors, one of which is Kesvaran, would firstly receive redeemable convertible unsecured loan stocks ("RCULS") issued by Aliran Ihsan Resources Berhad ("AIRB") on a pro-rata basis as part settlement of the debts due to them; and

(b) thereafter the balance of any debt still owing to RNC's creditors would be paid in *pari passu* in liquidation according to the Companies Act 1965 and Companies (Winding Up) Rules 1972.

[18] Based on the facts and clear provisions of the law, I am of the view that the leave order should not have been granted. My reasons are these:

(i) the relief sought by Kesvaran which is to obtain an unsecured monetary amount should be dealt with by way of proof of debts as part of the liquidation of RNC;

(ii) the fact that Kesvaran has an award granted by the Industrial Court should not entitle him to the first cut of the assets of RNC over and above the other creditors;

(iii) Kesvaran's unsecured monetary claim should rank *pari passu* ie, equally with the other unsecured creditors;

(iv) it would create a precedent for the creditors of RNC to proceed with their claim in the court, ignoring the terms of the Danaharta Scheme which would consequently hamper the expeditious discharge and performance of the duties and functions of the liquidators and further reduce the assets available for distribution to the general body of creditors. It would undermine the Danaharta Scheme and belittle the purpose of the Danaharta Act. All creditors, including Kesvaran and shareholders are bound by the Danaharta Scheme and therefore Kesvaran should be paid in accordance to the terms of the Danaharta Scheme.

(v) it would give Kesvaran an advantage over the other creditors in the winding up of RNC, thereby causing prejudice to the other creditors.

[19] It is for the same reason, the garnishee absolute order should not have been granted.

[20] It was argued before us by learned counsel representing Kesvaran, that there has been non compliance of ss. 254 and 260 of the Companies Act 1965 resulting in the purported liquidation of RNC as invalid, void and of no effect. With utmost respect, the argument is without merit because it overlooks the fact that RNC was invalidly wound up was not part of Kesvaran's case. On the contrary, Kesvaran indirectly admitted that RNC was in liquidation. In his summons seeking leave of the court to commence legal action against RNC pursuant to s. 263(2) of the Companies Act 1965, in para 5 of his supporting affidavit thereto, he stated that:

> Saya ... sesungguhnya mempercayai bahawa oleh kerana Penghutang Penghakiman kini berada dalam liquidasi, kebenaran Mahkamah Mulia ini dikehendaki bagi memulakan dan meneruskan tindakan ini terhadap Penghutang Penghakiman.

[21] With the above statement, Kesvaran cannot now contend that RNC had been invalidly wound-up. The fact that RNC had been wound up was clearly stated in para 18 of RNC's 1st affidavit affirmed by Chew Chong Eu dated 20 March 2006 which read as follows:

> 18. On 20.05.2005, a meeting of the creditors of RNC ("Creditors' Meeting") and an extraordinary general meeting of the members of RNC (EGM) were held and it was resolved thereat *inter alia* the RNC be wound up voluntarily by its creditors and that Dato' Abu Hanifah bin Noordin and myself would be appointed as the liquidators of RNC. There is now produced and shown to me marked collectively as Exhibit "RNC-2" a copy of the advertisement of the voluntarily winding up of RNC dated 25.05.2005, the notice of appointment and situation of office of liquidators (Form 72) dated 20.05.2005 and the notice of resolution (Form 11) dated 20.05.2005 duly lodged with the Companies Commission of Malaysia.

[22] The exhibits produced in support of the statement in para 18 above clearly shows that there was in fact a meeting of the members of RNC. Exhibit "RNC2" clearly demonstrates that it was resolved by special resolution that RNC cannot by reasons of its liabilities continue its business and accordingly be wound up by way of a creditors' voluntary winding up. It was also resolved by an ordinary resolution that Dato' Abu Hanifah bin Nordin and Mr. Chew Eu be appointed as liquidators of RNC to act jointly and severally for the purpose of the creditors' voluntary winding up. The notice of resolution was lodged with the Registrar of Companies in accordance with Form II and s. 154(1) and 254(2) of the Companies Act 1965. The fact that the meeting was held and the resolution passed was accordingly advertised as found at p. 251 of the record of appeal.

[23] Based on the above, there is no merit on the argument by Kesvaran that there has been non-compliance of the provisions of the Companies Act 1965. Moreover, the assertion by Kesvaran that RNC's winding up was invalid or in contravention of the Companies Act was not put on record as an issue to be tried, nor raised in any of the affidavits filed by Kesvaran. It is trite law that

parties are bound by their pleadings, and the courts must decide on a pleaded case. (See *TSC Education Sdn. Bhd. v. Kolej Yayasan Pelajaran Mara & Anor* [2002] 2 CLJ 581, *Koh Siah Poo v. Sayang Plantation Bhd.* [2002] 1 CLJ 501). In the present case, the validility and legality of RNC's liquidation was never raised by Kesvaran. No such challenge was pleaded nor evidence of the same was adduced. It was only raised by Kesvaran at the submission stage. Thus, the challenge made by him was more of an afterthought. Obviously, it should not be considered as RNC was not afforded the opportunity to proffer evidence to rebut the same.

(ii) Issue Of Estoppel

[24] The learned High Court Judge held that RNC and their liquidators are *estopped* from raising the issue on the status and priority of Kesvaran's claim since the issue had already been fully argued in, and decided by the Industrial Court during non-compliance proceedings instituted by Kesvaran. With respect, the doctrine of *estoppel* has no application in this case. In *Malayan United Finance Bhd. v. Noormurni Sdn. Bhd.* [1988] 1 CLJ 149; [1988] 1 CLJ (Rep) 190, the Supreme Court considered the issue of *estoppel* and said:

> We agree with the learned Judge that "issue of *estoppels*" can arise even where a plea of *res judicata* cannot be established because the causes of action are not the same.
>
> *Halsbury's Law of England* – 4th Edn, Vol 16 para 1530 succintly sets out the law, which is cited here – under:
>
> > A party is precluded from contending the contrary of any precise point which, having once been distinctly put in issue, has been solemnly and with certainty determined against him. Even if the objects of the first and second actions are different, the finding on a matter which came 'directly (not collaterally or incidentally) in issue in the first action, provided it is embodied in a judicial decision that is final, is conclusion in a second action between the same parties and their privies. This principle applied whether the point involved in the earlier decision, and as to which the parties are *estoppels*, is one of fact or one of law, or one of mixed fact and law. *The conditions for the application of the doctrine have been stated as being that: (1) the same question was decided*

in both proceedings; (2) the judicial decision said to create the estoppels was final; (3) the parties to the judicial decision or their parties were the same persons as the parties to the proceedings in which the estoppels is raised or their privies. (emphasis added)

[25] From the above authority, it is clear that the doctrine of *estoppel* only applies when the same question has been decided in the earlier proceedings. In the present case, the Industrial Court had only decided that the Special Administrator had the cash of RM342,333 to pay Kesvaran but was not willing to do so. Evidently, the issues that were considered in the non-compliance hearing before the Industrial Court were different from the issues in the present case. The issues in the present case are:

(i) whether the Special Administrators were entitled to and had in fact reclassified Kesvaran as an essential creditor;

(ii) whether Kesvaran should be given priority over all other unsecured creditors of RNC;

(iii) whether leave should be granted to Kesvaran to commence legal proceedings against RNC in liquidation; and

(iv) the ambit of s. 263 of the Companies Act, the Danaharta Scheme and the Danaharta Act and how the provision therein may be applied in this matter.

Hence, Kesvaran's reliance on issue of *estoppel* is unfounded as the status and priority of his claims were not decided in the non compliance proceedings.

[26] For the aforesaid reasons, I would allow both appeals with costs. The deposit of these appeals must be refunded to RNC.

[27] My learned brothers Low Hop Bing and Abu Samah Nordin JJCA have read this judgment in draft and have agreed to make it the judgment of this court.